

**REMARKS**

Claims 33-48 are now pending within this application. No Claims have been added, deleted, or amended.

The Office has rejected Claims 33-48 under 35 U.S.C. § 103(a) as unpatentable over Lever in view of Koji et al. This rejection relies upon the status of Lever (US Pat # 6,187,456) as proper prior art over the instant claims. Pursuant to 37 CFR § 1.130, Applicants herein submit a proper Terminal Disclaimer which, when coupled with the previously submitted Statement to Disqualify the Lever patent as prior art due to common assignment, disqualifies the Lever patent as prior art over the present claims. Thus, the basis of this rejection is improper. For that reason, it is respectfully requested that reconsideration and withdrawal of such a basis of rejection be performed in this instance by the Office.

The Office has also rejected Claims 33-48 under 35 U.S.C. § 103(a) as unpatentable over Koji et al. by itself. In view of the limitations of the present claims, it is respectfully submitted that such a rejection is clearly improper. Koji et al. are limited to rubber-reinforced styrenic resins; the present claims require polyolefin resins. The Office believes that Applicants have considered styrenics to be polyolefins from a disclosure on page 6 of the originally filed specification. Applicants cannot locate any such disclosure. The only listing which may have confused the Office in this instance is the following from line 2 to line 9:

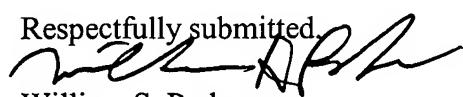
“For instance, and without intending any limitations therein, polyolefins, such as polyethylene, polypropylene, and polybutylene, styrenics, such as polystyrene, ABS, and the like, and polyesters, such as polyethylene terephthalate, may be utilized within this invention. Preferably, the plastic is a thermoplastic that can be molded into different shapes and sizes upon extrusion a molding with the silver-containing antimicrobial and the required excess amount of carboxylic acid salts. Thus, polyolefins, particularly polypropylene, and styrenics, particularly polystyrene, are preferred.”

Applicants properly separated the terms polyolefin, styrenics, and polyesters throughout these passages by properly giving examples of the broad terms after each listing then moving on to the next term in each situation. Where is the overlap that Office believes exists? The Examples of the application also clearly separate these different types of thermoplastics. If, as the original claims were written, the term "thermoplastic" were present, then Applicants would agree with the assessment of the Office; however, Applicants have gone to the proper lengths to distinguish such terms as polyolefin and styrenics, even to the extent of refiling claims directed solely to styrenics in a proper divisional application, in order to get around the Koji et al. reference. The retention of such a position and thus such a basis of rejection is thus not well taken nor fully understood by Applicants. Thus, if the Office decides proper basis of rejection still resides in this situation, Applicants hereby request a showing from the Office wherein polyolefin and styrenics are common, overlapping terms. As it is, Applicants' collective opinion is that there is no suggestion within Koji et al. for the inclusion of carboxylic acids of any type within polyolefin resin articles at all, let alone within antimicrobial polyolefins. Thus, there is no teaching of the claimed invention, either explicitly taught or fairly suggested, by patentees. Thus, retention of such a reference as the basis of rejection over the pending claims is improper. Reconsideration and withdrawal thereof are therefore respectfully requested.

## CONCLUSION

In view of all of the accompanying remarks above, it is respectfully submitted that the pending claims are now in condition for allowance and it is requested that this application be passed on to issue.

Respectfully submitted,



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October 14, 2003

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 14, 2003, along with a postcard receipt.

  
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